

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 286

Introduced by Assembly Member Nazarian

February 11, 2013

An act ~~relating to the film and entertainment industry~~, to amend Sections 17053.85 and 23685 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 286, as amended, Nazarian. ~~Film and entertainment industry.~~ *Income taxes: credit: qualified motion pictures.*

~~Existing law sets forth the duties of the California Film Commission in helping to maintain and improve the position of the state's motion picture industry in the national and world markets.~~

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit against those taxes for taxable years beginning on or after January 1, 2011, in an amount equal to a specified percentage of the qualified expenditures, as defined, attributable to the production of a qualified motion picture in California, or, where the qualified motion picture has relocated to California or is an independent film, as provided. Existing law defines qualified a motion picture to include a feature with a minimum production budget of \$1,000,000 and a maximum production budget of \$75,000,000. Existing law imposes specified duties on the California Film Commission related to the administration of the credits, including a requirement to allocate the tax credits until July 1, 2017, and limits the aggregate amount of credits

that may be allocated to qualified motion pictures in any fiscal year to \$100,000,000, through the 2016–17 fiscal year.

~~This bill would state the intent of the Legislature to enact legislation relating to the film and entertainment industry in California~~ *expand the definition of qualified motion pictures by removing the cap on the production budget for feature films and limit the amount of qualified expenditures, for purposes of the qualified motion pictures that are features, to \$75,000,000. This bill would additionally revise the amount of credits allocated per fiscal year to provide that a minimum threshold is met for allocations to specified qualified motion pictures.*

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: ~~majority~~ $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 17053.85 of the Revenue and Taxation*
- 2 *Code is amended to read:*
- 3 17053.85. (a) (1) For taxable years beginning on or after
- 4 January 1, 2011, there shall be allowed to a qualified taxpayer a
- 5 credit against the “net tax,” as defined in Section 17039, in an
- 6 amount equal to the applicable percentage, as specified in
- 7 paragraph (4), of the qualified expenditures for the production of
- 8 a qualified motion picture in California.
- 9 (2) The credit shall be allowed for the taxable year in which the
- 10 California Film Commission issues the credit certificate pursuant
- 11 to subdivision (g) for the qualified motion picture, and shall be for
- 12 the applicable percentage of all qualified expenditures paid or
- 13 incurred by the qualified taxpayer in all taxable years for that
- 14 qualified motion picture.
- 15 (3) The amount of the credit allowed to a qualified taxpayer
- 16 shall be limited to the amount specified in the credit certificate
- 17 issued to the qualified taxpayer by the California Film Commission
- 18 pursuant to subdivision (g).
- 19 (4) For purposes of paragraphs (1) and (2), the applicable
- 20 percentage shall be:

1 (A) (i) Twenty percent of the qualified expenditures attributable
2 to the production of a qualified motion picture in California.

3 (ii) *With regard to a qualified motion picture that is a feature,*
4 *qualified expenditures shall not exceed seventy-five million dollars*
5 *(\$75,000,000).*

6 (B) Twenty-five percent of the qualified expenditures
7 attributable to the production of a qualified motion picture in
8 California where the qualified motion picture is a television series
9 that relocated to California or an independent film.

10 (b) For purposes of this section:

11 (1) “Ancillary product” means any article for sale to the public
12 that contains a portion of, or any element of, the qualified motion
13 picture.

14 (2) “Budget” means an estimate of all expenses paid or incurred
15 during the production period of a qualified motion picture. It shall
16 be the same budget used by the qualified taxpayer and production
17 company for all qualified motion picture purposes.

18 (3) “Clip use” means a use of any portion of a motion picture,
19 other than the qualified motion picture, used in the qualified motion
20 picture.

21 (4) “Credit certificate” means the certificate issued by the
22 California Film Commission pursuant to subparagraph (C) of
23 paragraph (2) of subdivision (g).

24 (5) (A) “Employee fringe benefits” means the amount allowable
25 as a deduction under this part to the qualified taxpayer involved
26 in the production of the qualified motion picture, exclusive of any
27 amounts contributed by employees, for any year during the
28 production period with respect to any of the following:

29 (i) Employer contributions under any pension, profit-sharing,
30 annuity, or similar plan.

31 (ii) Employer-provided coverage under any accident or health
32 plan for employees.

33 (iii) The employer’s cost of life or disability insurance provided
34 to employees.

35 (B) Any amount treated as wages under clause (i) of
36 subparagraph (A) of paragraph (18) shall not be taken into account
37 under this paragraph.

38 (6) “Independent film” means a motion picture with a minimum
39 budget of one million dollars (\$1,000,000) and a maximum budget
40 of ten million dollars (\$10,000,000) that is produced by a company

1 that is not publicly traded and publicly traded companies do not
2 own, directly or indirectly, more than 25 percent of the producing
3 company.

4 (7) “Licensing” means any grant of rights to distribute the
5 qualified motion picture, in whole or in part.

6 (8) “New use” means any use of a motion picture in a medium
7 other than the medium for which it was initially created.

8 (9) (A) “Postproduction” means the final activities in a qualified
9 motion picture’s production, including editing, foley recording,
10 automatic dialogue replacement, sound editing, scoring and music
11 editing, beginning and end credits, negative cutting, negative
12 processing and duplication, the addition of sound and visual effects,
13 soundmixing, film-to-tape transfers, encoding, and color correction.

14 (B) “Postproduction” does not include the manufacture or
15 shipping of release prints.

16 (10) “Preproduction” means the process of preparation for actual
17 physical production which begins after a qualified motion picture
18 has received a firm agreement of financial commitment, or is
19 greenlit, with, for example, the establishment of a dedicated
20 production office, the hiring of key crew members, and includes,
21 but is not limited to, activities that include location scouting and
22 execution of contracts with vendors of equipment and stage space.

23 (11) “Principal photography” means the phase of production
24 during which the motion picture is actually shot, as distinguished
25 from preproduction and postproduction.

26 (12) “Production period” means the period beginning with
27 preproduction and ending upon completion of postproduction.

28 (13) “Qualified entity” means a personal service corporation as
29 defined in Section 269A(b)(1) of the Internal Revenue Code, a
30 payroll services corporation, or any entity receiving qualified wages
31 with respect to services performed by a qualified individual.

32 (14) (A) “Qualified individual” means any individual who
33 performs services during the production period in an activity related
34 to the production of a qualified motion picture.

35 (B) “Qualified individual” shall not include either of the
36 following:

37 (i) Any individual related to the qualified taxpayer as described
38 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
39 Revenue Code.

1 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of
2 the Internal Revenue Code, of the qualified taxpayer.

3 (15) (A) “Qualified motion picture” means a motion picture
4 that is produced for distribution to the general public, regardless
5 of medium, that is one of the following:

6 (i) A feature with a minimum production budget of one million
7 dollars (\$1,000,000) ~~and a maximum production budget of~~
8 ~~seventy-five million dollars (\$75,000,000).~~

9 (ii) A movie of the week or miniseries with a minimum
10 production budget of five hundred thousand dollars (\$500,000).

11 (iii) A new television series produced in California with a
12 minimum production budget of one million dollars (\$1,000,000)
13 licensed for original distribution on basic cable.

14 (iv) An independent film.

15 (v) A television series that relocated to California.

16 (B) To qualify as a “qualified motion picture,” all of the
17 following conditions shall be satisfied:

18 (i) At least 75 percent of the production days occur wholly in
19 California or 75 percent of the production budget is incurred for
20 payment for services performed within the state and the purchase
21 or rental of property used within the state.

22 (ii) Production of the qualified motion picture is completed
23 within 30 months from the date on which the qualified taxpayer’s
24 application is approved by the California Film Commission. For
25 purposes of this section, a qualified motion picture is “completed”
26 when the process of postproduction has been finished.

27 (iii) The copyright for the motion picture is registered with the
28 United States Copyright Office pursuant to Title 17 of the United
29 States Code.

30 (iv) Principal photography of the qualified motion picture
31 commences after the date on which the application is approved by
32 the California Film Commission, but no later than 180 days after
33 the date of that approval.

34 (C) For the purposes of subparagraph (A), in computing the
35 total wages paid or incurred for the production of a qualified
36 motion picture, all amounts paid or incurred by all persons or
37 entities that share in the costs of the qualified motion picture shall
38 be aggregated.

39 (D) “Qualified motion picture” shall not include commercial
40 advertising, music videos, a motion picture produced for private

1 noncommercial use, such as weddings, graduations, or as part of
2 an educational course and made by students, a news program,
3 current events or public events program, talk show, game show,
4 sporting event or activity, awards show, telethon or other
5 production that solicits funds, reality television program, clip-based
6 programming if more than 50 percent of the content is comprised
7 of licensed footage, documentaries, variety programs, daytime
8 dramas, strip shows, one-half hour (air time) episodic television
9 shows, or any production that falls within the recordkeeping
10 requirements of Section 2257 of Title 18 of the United States Code.

11 (16) “Qualified expenditures” means amounts paid or incurred
12 to purchase or lease tangible personal property used within this
13 state in the production of a qualified motion picture and payments,
14 including qualified wages, for services performed within this state
15 in the production of a qualified motion picture.

16 (17) (A) “Qualified taxpayer” means a taxpayer who has paid
17 or incurred qualified expenditures and has been issued a credit
18 certificate by the California Film Commission pursuant to
19 subdivision (g).

20 (B) In the case of any pass-thru entity, the determination of
21 whether a taxpayer is a qualified taxpayer under this section shall
22 be made at the entity level and any credit under this section is not
23 allowed to the pass-thru entity, but shall be passed through to the
24 partners or shareholders in accordance with applicable provisions
25 of Part 10 (commencing with Section 17001) or Part 11
26 (commencing with Section 23001). For purposes of this paragraph,
27 “pass-thru entity” means any entity taxed as a partnership or “S”
28 corporation.

29 (18) (A) “Qualified wages” means all of the following:

30 (i) Any wages subject to withholding under Division 6
31 (commencing with Section 13000) of the Unemployment Insurance
32 Code that were paid or incurred by any taxpayer involved in the
33 production of a qualified motion picture with respect to a qualified
34 individual for services performed on the qualified motion picture
35 production within this state.

36 (ii) The portion of any employee fringe benefits paid or incurred
37 by any taxpayer involved in the production of the qualified motion
38 picture that are properly allocable to qualified wage amounts
39 described in clause (i).

1 (iii) Any payments made to a qualified entity for services
2 performed in this state by qualified individuals within the meaning
3 of paragraph (14).

4 (iv) Remuneration paid to an independent contractor who is a
5 qualified individual for services performed within this state by that
6 qualified individual.

7 (B) “Qualified wages” shall not include any of the following:

8 (i) Expenses, including wages, related to new use, reuse, clip
9 use, licensing, secondary markets, or residual compensation, or
10 the creation of any ancillary product, including, but not limited to,
11 a soundtrack album, toy, game, trailer, or teaser.

12 (ii) Expenses, including wages, paid or incurred with respect to
13 acquisition, development, turnaround, or any rights thereto.

14 (iii) Expenses, including wages, related to financing, overhead,
15 marketing, promotion, or distribution of a qualified motion picture.

16 (iv) Expenses, including wages, paid per person per qualified
17 motion picture for writers, directors, music directors, music
18 composers, music supervisors, producers, and performers, other
19 than background actors with no scripted lines.

20 (19) “Residual compensation” means supplemental
21 compensation paid at the time that a motion picture is exhibited
22 through new use, reuse, clip use, or in secondary markets, as
23 distinguished from payments made during production.

24 (20) “Reuse” means any use of a qualified motion picture in the
25 same medium for which it was created, following the initial use
26 in that medium.

27 (21) “Secondary markets” means media in which a qualified
28 motion picture is exhibited following the initial media in which it
29 is exhibited.

30 (22) “Television series that relocated to California” means a
31 television series, without regard to episode length or initial media
32 exhibition, that filmed all of its prior season or seasons outside of
33 California and for which the taxpayer certifies that the credit
34 provided pursuant to this section is the primary reason for
35 relocating to California.

36 (c) (1) Notwithstanding any other law, a qualified taxpayer
37 may sell any credit allowed under this section that is attributable
38 to an independent film, as defined in paragraph (6) of subdivision
39 (b), to an unrelated party.

(2) The qualified taxpayer shall report to the Franchise Tax Board prior to the sale of the credit, in the form and manner specified by the Franchise Tax Board, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of the unrelated party to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received by the qualified taxpayer for the sale of the credit.

(3) In the case where the credit allowed under this section exceeds the “net tax,” the excess credit may be carried over to reduce the “net tax” in the following taxable year, and succeeding five taxable years, if necessary, until the credit has been exhausted.

(4) A credit shall not be sold pursuant to this subdivision to more than one taxpayer, nor may the credit be resold by the unrelated party to another taxpayer or other party.

(5) A party that has acquired tax credits under this section shall be subject to the requirements of this section.

(6) In no event may a qualified taxpayer assign or sell any tax credit to the extent the tax credit allowed by this section is claimed on any tax return of the qualified taxpayer.

(7) In the event that both the taxpayer originally allocated a credit under this section by the California Film Commission and a taxpayer to whom the credit has been sold both claim the same amount of credit on their tax returns, the Franchise Tax Board may disallow the credit of either taxpayer, so long as the statute of limitations upon assessment remains open.

(8) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this subdivision.

(9) Subdivision (g) of Section 17039 shall not apply to any credit sold pursuant to this subdivision.

(10) For purposes of this subdivision, the unrelated party or parties that purchase a credit pursuant to this subdivision shall be treated as a qualified taxpayer pursuant to paragraph (1) of subdivision (a).

(d) No credit shall be allowed pursuant to this section unless the qualified taxpayer provides the following to the California Film Commission:

- 1 (1) Identification of each qualified individual.
- 2 (2) The specific start and end dates of production.
- 3 (3) The total wages paid.
- 4 (4) The amount of qualified wages paid to each qualified
- 5 individual.
- 6 (5) The copyright registration number, as reflected on the
- 7 certificate of registration issued under the authority of Section 410
- 8 of Title 17 of the United States Code, relating to registration of
- 9 claim and issuance of certificate. The registration number shall be
- 10 provided on the return claiming the credit.
- 11 (6) The total amounts paid or incurred to purchase or lease
- 12 tangible personal property used in the production of a qualified
- 13 motion picture.
- 14 (7) Information to substantiate its qualified expenditures.
- 15 (8) Information required by the California Film Commission
- 16 under regulations promulgated pursuant to subdivision (g)
- 17 necessary to verify the amount of credit claimed.
- 18 (e) The California Film Commission may prescribe rules and
- 19 regulations to carry out the purposes of this section including any
- 20 rules and regulations necessary to establish procedures, processes,
- 21 requirements, and rules identified in or required to implement this
- 22 section. The regulations shall include provisions to set aside a
- 23 percentage of annual credit allocations for independent films.
- 24 (f) If the qualified taxpayer fails to provide the copyright
- 25 registration number as required in paragraph (5) of subdivision
- 26 (d), the credit shall be disallowed and assessed and collected under
- 27 Section 19051 until the procedures are satisfied.
- 28 (g) For purposes of this section, the California Film Commission
- 29 shall do the following:
- 30 (1) On or after July 1, 2009, and before July 1, 2017, allocate
- 31 tax credits to applicants.
- 32 (A) Establish a procedure for applicants to file with the
- 33 California Film Commission a written application, on a form jointly
- 34 prescribed by the California Film Commission and the Franchise
- 35 Tax Board for the allocation of the tax credit. The application shall
- 36 include, but not be limited to, the following information:
- 37 (i) The budget for the motion picture production.
- 38 (ii) The number of production days.
- 39 (iii) A financing plan for the production.

1 (iv) The diversity of the workforce employed by the applicant,
2 including, but not limited to, the ethnic and racial makeup of the
3 individuals employed by the applicant during the production of
4 the qualified motion picture, to the extent possible.

5 (v) All members of a combined reporting group, if known at
6 the time of the application.

7 (vi) Financial information, if available, including, but not limited
8 to, the most recently produced balance sheets, annual statements
9 of profits and losses, audited or unaudited financial statements,
10 summary budget projections or results, or the functional equivalent
11 of these documents of a partnership or owner of a single member
12 limited liability company that is disregarded pursuant to Section
13 23038. The information provided pursuant to this clause shall be
14 confidential and shall not be subject to public disclosure.

15 (vii) The names of all partners in a partnership not publicly
16 traded or the names of all members of a limited liability company
17 classified as a partnership not publicly traded for California income
18 tax purposes that have a financial interest in the applicant's
19 qualified motion picture. The information provided pursuant to
20 this clause shall be confidential and shall not be subject to public
21 disclosure.

22 (viii) Detailed narratives, for use only by the Legislative
23 Analyst's Office in conducting a study of the effectiveness of this
24 credit, that describe the extent to which the credit is expected to
25 influence or affect filming and other business location decisions,
26 hiring decisions, salary decisions, and any other financial matters
27 of the applicant.

28 (ix) Any other information deemed relevant by the California
29 Film Commission or the Franchise Tax Board.

30 (B) Establish criteria, consistent with the requirements of this
31 section, for allocating tax credits.

32 (C) Determine and designate applicants who meet the
33 requirements of this section.

34 (D) Process and approve, or reject, all applications on a
35 first-come-first-served basis.

36 (E) Subject to the annual cap established as provided in
37 subdivision (i), allocate an aggregate amount of credits under this
38 section and Section 23685, and allocate any carryover of
39 unallocated credits from prior years.

40 (2) Certify tax credits allocated to qualified taxpayers.

1 (A) Establish a verification procedure for the amount of qualified
2 expenditures paid or incurred by the applicant, including, but not
3 limited to, updates to the information in subparagraph (A) of
4 paragraph (1) of subdivision (g).

5 (B) Establish audit requirements that must be satisfied before
6 a credit certificate may be issued by the California Film
7 Commission.

8 (C) (i) Establish a procedure for a qualified taxpayer to report
9 to the California Film Commission, prior to the issuance of a credit
10 certificate, the following information:

11 (I) If readily available, a list of the states, provinces, or other
12 jurisdictions in which any member of the applicant's combined
13 reporting group in the same business unit as the qualified taxpayer
14 that, in the preceding calendar year, has produced a qualified
15 motion picture intended for release in the United States market.
16 For purposes of this clause, "qualified motion picture" shall not
17 include any episodes of a television series that were complete or
18 in production prior to July 1, 2009.

19 (II) Whether a qualified motion picture described in subclause
20 (I) was awarded any financial incentive by the state, province, or
21 other jurisdiction that was predicated on the performance of
22 primary principal photography or postproduction in that location.

23 (ii) The California Film Commission may provide that the report
24 required by this subparagraph be filed in a single report provided
25 on a calendar year basis for those qualified taxpayers that receive
26 multiple credit certificates in a calendar year.

27 (D) Issue a credit certificate to a qualified taxpayer upon
28 completion of the qualified motion picture reflecting the credit
29 amount allocated after qualified expenditures have been verified
30 under this section. The amount of credit shown in the credit
31 certificate shall not exceed the amount of credit allocated to that
32 qualified taxpayer pursuant to this section.

33 (3) Obtain, when possible, the following information from
34 applicants that do not receive an allocation of credit:

35 (A) Whether the qualified motion picture that was the subject
36 of the application was completed.

37 (B) If completed, in which state or foreign jurisdiction was the
38 primary principal photography completed.

1 (C) Whether the applicant received any financial incentives
2 from the state or foreign jurisdiction to make the qualified motion
3 picture in that location.

4 (4) Provide the Legislative Analyst's Office, upon request, any
5 or all application materials or any other materials received from,
6 or submitted by, the applicants, in electronic format when available,
7 including, but not limited to, information provided pursuant to
8 clauses (i) to (ix), inclusive, of subparagraph (A) of paragraph (1).

9 (5) The information provided to the California Film Commission
10 pursuant to this section shall constitute confidential tax information
11 for purposes of Article 2 (commencing with Section 19542) of
12 Chapter 7 of Part 10.2.

13 (h) (1) The California Film Commission shall annually provide
14 the Legislative Analyst's Office, the Franchise Tax Board, and the
15 board with a list of qualified taxpayers and the tax credit amounts
16 allocated to each qualified taxpayer by the California Film
17 Commission. The list shall include the names and taxpayer
18 identification numbers, including taxpayer identification numbers
19 of each partner or shareholder, as applicable, of the qualified
20 taxpayer.

21 (2) (A) Notwithstanding paragraph (5) of subdivision (g), the
22 California Film Commission shall annually post on its Internet
23 Web site and make available for public release the following:

24 (i) A table which includes all of the following information: a
25 list of qualified taxpayers and the tax credit amounts allocated to
26 each qualified taxpayer by the California Film Commission, the
27 number of production days in California the qualified taxpayer
28 represented in its application would occur, the number of California
29 jobs that the qualified taxpayer represented in its application would
30 be directly created by the production, and the total amount of
31 qualified expenditures expected to be spent by the production.

32 (ii) A narrative staff summary describing the production of the
33 qualified taxpayer as well as background information regarding
34 the qualified taxpayer contained in the qualified taxpayer's
35 application for the credit.

36 (B) Nothing in this subdivision shall be construed to make the
37 information submitted by an applicant for a tax credit under this
38 section a public record.

1 (i) (1) The aggregate amount of credits that may be allocated
2 in any fiscal year pursuant to this section and Section 23685 shall
3 be an amount equal to the sum of all of the following:

4 (A) One hundred million dollars (\$100,000,000) in credits for
5 the 2009–10 fiscal year and each fiscal year thereafter, through
6 and including the 2016–17 fiscal year.

7 (B) The unused allocation credit amount, if any, for the
8 preceding fiscal year.

9 (C) The amount of previously allocated credits not certified.

10 (2) If the amount of credits applied for in any particular fiscal
11 year exceeds the aggregate amount of tax credits authorized to be
12 allocated under this section, such excess shall be treated as having
13 been applied for on the first day of the subsequent fiscal year.
14 However, credits may not be allocated from a fiscal year other
15 than the fiscal year in which the credit was originally applied for
16 or the immediately succeeding fiscal year.

17 (3) Notwithstanding the foregoing, the California Film
18 Commission shall set aside up to ten million dollars (\$10,000,000)
19 of tax credits each fiscal year for independent films allocated in
20 accordance with rules and regulations developed pursuant to
21 subdivision (e).

22 (4) *Notwithstanding the foregoing, for the 2013–14, 2014–15,*
23 *and 2015–16 fiscal years, the California Film Commission shall*
24 *offset the aggregate amount of credits allocated to qualified motion*
25 *pictures defined pursuant to clauses (iii) and (v) of subparagraph*
26 *(A) of paragraph (15) of subdivision (b) with an allocation amount*
27 *from the next fiscal year so that the total aggregate amount of*
28 *credits allocated to qualified motion pictures defined pursuant to*
29 *clauses (i), (ii), and (iv) of subparagraph (A) of paragraph (15)*
30 *of subdivision (b) meets the minimum one hundred million dollars*
31 *(\$100,000,000) required by subparagraph (A) of this paragraph.*

32 ~~(4)~~

33 (5) Any act that reduces the amount that may be allocated
34 pursuant to paragraph (1) constitutes a change in state taxes for
35 the purpose of increasing revenues within the meaning of Section
36 3 of Article XIII A of the California Constitution and may be passed
37 by not less than two-thirds of all Members elected to each of the
38 two houses of the Legislature.

39 (j) The California Film Commission shall have the authority to
40 allocate tax credits in accordance with this section and in

1 accordance with any regulations prescribed pursuant to subdivision
2 (e) upon adoption.

3 *SEC. 2. Section 23685 of the Revenue and Taxation Code is*
4 *amended to read:*

5 23685. (a) (1) For taxable years beginning on or after January
6 1, 2011, there shall be allowed to a qualified taxpayer a credit
7 against the “tax,” as defined in Section 23036, in an amount equal
8 to the applicable percentage, as specified in paragraph (4), of the
9 qualified expenditures for the production of a qualified motion
10 picture in California.

11 (2) The credit shall be allowed for the taxable year in which the
12 California Film Commission issues the credit certificate pursuant
13 to subdivision (g) for the qualified motion picture, and shall be for
14 the applicable percentage of all qualified expenditures paid or
15 incurred by the qualified taxpayer in all taxable years for that
16 qualified motion picture.

17 (3) The amount of the credit allowed to a qualified taxpayer
18 shall be limited to the amount specified in the credit certificate
19 issued to the qualified taxpayer by the California Film Commission
20 pursuant to subdivision (g).

21 (4) For purposes of paragraphs (1) and (2), the applicable
22 percentage shall be:

23 (A) (i) Twenty percent of the qualified expenditures attributable
24 to the production of a qualified motion picture in California.

25 (ii) *With regard to a qualified motion picture that is a feature,*
26 *qualified expenditures shall not exceed seventy-five million dollars*
27 *(\$75,000,000).*

28 (B) Twenty-five percent of the qualified expenditures
29 attributable to the production of a qualified motion picture in
30 California where the qualified motion picture is a television series
31 that relocated to California or an independent film.

32 (b) For purposes of this section:

33 (1) “Ancillary product” means any article for sale to the public
34 that contains a portion of, or any element of, the qualified motion
35 picture.

36 (2) “Budget” means an estimate of all expenses paid or incurred
37 during the production period of a qualified motion picture. It shall
38 be the same budget used by the qualified taxpayer and production
39 company for all qualified motion picture purposes.

1 (3) “Clip use” means a use of any portion of a motion picture,
2 other than the qualified motion picture, used in the qualified motion
3 picture.

4 (4) “Credit certificate” means the certificate issued by the
5 California Film Commission pursuant to subparagraph (C) of
6 paragraph (2) of subdivision (g).

7 (5) (A) “Employee fringe benefits” means the amount allowable
8 as a deduction under this part to the qualified taxpayer involved
9 in the production of the qualified motion picture, exclusive of any
10 amounts contributed by employees, for any year during the
11 production period with respect to any of the following:

12 (i) Employer contributions under any pension, profit-sharing,
13 annuity, or similar plan.

14 (ii) Employer-provided coverage under any accident or health
15 plan for employees.

16 (iii) The employer’s cost of life or disability insurance provided
17 to employees.

18 (B) Any amount treated as wages under clause (i) of
19 subparagraph (A) of paragraph (18) shall not be taken into account
20 under this paragraph.

21 (6) “Independent film” means a motion picture with a minimum
22 budget of one million dollars (\$1,000,000) and a maximum budget
23 of ten million dollars (\$10,000,000) that is produced by a company
24 that is not publicly traded and publicly traded companies do not
25 own, directly or indirectly, more than 25 percent of the producing
26 company.

27 (7) “Licensing” means any grant of rights to distribute the
28 qualified motion picture, in whole or in part.

29 (8) “New use” means any use of a motion picture in a medium
30 other than the medium for which it was initially created.

31 (9) (A) “Postproduction” means the final activities in a qualified
32 motion picture’s production, including editing, foley recording,
33 automatic dialogue replacement, sound editing, scoring and music
34 editing, beginning and end credits, negative cutting, negative
35 processing and duplication, the addition of sound and visual effects,
36 soundmixing, film-to-tape transfers, encoding, and color correction.

37 (B) “Postproduction” does not include the manufacture or
38 shipping of release prints.

39 (10) “Preproduction” means the process of preparation for actual
40 physical production which begins after a qualified motion picture

1 has received a firm agreement of financial commitment, or is
2 greenlit, with, for example, the establishment of a dedicated
3 production office, the hiring of key crew members, and includes,
4 but is not limited to, activities that include location scouting and
5 execution of contracts with vendors of equipment and stage space.

6 (11) “Principal photography” means the phase of production
7 during which the motion picture is actually shot, as distinguished
8 from preproduction and postproduction.

9 (12) “Production period” means the period beginning with
10 preproduction and ending upon completion of postproduction.

11 (13) “Qualified entity” means a personal service corporation as
12 defined in Section 269A(b)(1) of the Internal Revenue Code, a
13 payroll services corporation, or any entity receiving qualified wages
14 with respect to services performed by a qualified individual.

15 (14) (A) “Qualified individual” means any individual who
16 performs services during the production period in an activity related
17 to the production of a qualified motion picture.

18 (B) “Qualified individual” shall not include either of the
19 following:

20 (i) Any individual related to the qualified taxpayer as described
21 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
22 Revenue Code.

23 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of
24 the Internal Revenue Code, of the qualified taxpayer.

25 (15) (A) “Qualified motion picture” means a motion picture
26 that is produced for distribution to the general public, regardless
27 of medium that is one of the following:

28 (i) A feature with a minimum production budget of one million
29 dollars (\$1,000,000) ~~and a maximum production budget of~~
30 ~~seventy-five million dollars (\$75,000,000).~~

31 (ii) A movie of the week or miniseries with a minimum
32 production budget of five hundred thousand dollars (\$500,000).

33 (iii) A new television series produced in California with a
34 minimum production budget of one million dollars (\$1,000,000)
35 licensed for original distribution on basic cable.

36 (iv) An independent film.

37 (v) A television series that relocated to California.

38 (B) To qualify as a “qualified motion picture,” all of the
39 following conditions shall be satisfied:

1 (i) At least 75 percent of the production days occur wholly in
2 California or 75 percent of the production budget is incurred for
3 payment for services performed within the state and the purchase
4 or rental of property used within the state.

5 (ii) Production of the qualified motion picture is completed
6 within 30 months from the date on which the qualified taxpayer's
7 application is approved by the California Film Commission. For
8 purposes of this section, a qualified motion picture is "completed"
9 when the process of postproduction has been finished.

10 (iii) The copyright for the motion picture is registered with the
11 United States Copyright Office pursuant to Title 17 of the United
12 States Code.

13 (iv) Principal photography of the qualified motion picture
14 commences after the date on which the application is approved by
15 the California Film Commission, but no later than 180 days after
16 the date of that approval.

17 (C) For the purposes of subparagraph (A), in computing the
18 total wages paid or incurred for the production of a qualified
19 motion picture, all amounts paid or incurred by all persons or
20 entities that share in the costs of the qualified motion picture shall
21 be aggregated.

22 (D) "Qualified motion picture" shall not include commercial
23 advertising, music videos, a motion picture produced for private
24 noncommercial use, such as weddings, graduations, or as part of
25 an educational course and made by students, a news program,
26 current events or public events program, talk show, game show,
27 sporting event or activity, awards show, telethon or other
28 production that solicits funds, reality television program, clip-based
29 programming if more than 50 percent of the content is comprised
30 of licensed footage, documentaries, variety programs, daytime
31 dramas, strip shows, one-half hour (air time) episodic television
32 shows, or any production that falls within the recordkeeping
33 requirements of Section 2257 of Title 18 of the United States Code.

34 (16) "Qualified expenditures" means amounts paid or incurred
35 to purchase or lease tangible personal property used within this
36 state in the production of a qualified motion picture and payments,
37 including qualified wages, for services performed within this state
38 in the production of a qualified motion picture.

39 (17) (A) "Qualified taxpayer" means a taxpayer who has paid
40 or incurred qualified expenditures and has been issued a credit

1 certificate by the California Film Commission pursuant to
2 subdivision (g).

3 (B) (i) In the case of any pass-thru entity, the determination of
4 whether a taxpayer is a qualified taxpayer under this section shall
5 be made at the entity level and any credit under this section is not
6 allowed to the pass-thru entity, but shall be passed through to the
7 partners or shareholders in accordance with applicable provisions
8 of Part 10 (commencing with Section 17001) or Part 11
9 (commencing with Section 23001). For purposes of this paragraph,
10 “pass-thru entity” means any entity taxed as a partnership or “S”
11 corporation.

12 (ii) In the case of an “S” corporation, the credit allowed under
13 this section shall not be used by an “S” corporation as a credit
14 against a tax imposed under Chapter 4.5 (commencing with Section
15 23800) of Part 11 of Division 2.

16 (18) (A) “Qualified wages” means all of the following:

17 (i) Any wages subject to withholding under Division 6
18 (commencing with Section 13000) of the Unemployment Insurance
19 Code that were paid or incurred by any taxpayer involved in the
20 production of a qualified motion picture with respect to a qualified
21 individual for services performed on the qualified motion picture
22 production within this state.

23 (ii) The portion of any employee fringe benefits paid or incurred
24 by any taxpayer involved in the production of the qualified motion
25 picture that are properly allocable to qualified wage amounts
26 described in clause (i).

27 (iii) Any payments made to a qualified entity for services
28 performed in this state by qualified individuals within the meaning
29 of paragraph (14).

30 (iv) Remuneration paid to an independent contractor who is a
31 qualified individual for services performed within this state by that
32 qualified individual.

33 (B) “Qualified wages” shall not include any of the following:

34 (i) Expenses, including wages, related to new use, reuse, clip
35 use, licensing, secondary markets, or residual compensation, or
36 the creation of any ancillary product, including, but not limited to,
37 a soundtrack album, toy, game, trailer, or teaser.

38 (ii) Expenses, including wages, paid or incurred with respect to
39 acquisition, development, turnaround, or any rights thereto.

1 (iii) Expenses, including wages, related to financing, overhead,
2 marketing, promotion, or distribution of a qualified motion picture.

3 (iv) Expenses, including wages, paid per person per qualified
4 motion picture for writers, directors, music directors, music
5 composers, music supervisors, producers, and performers, other
6 than background actors with no scripted lines.

7 (19) “Residual compensation” means supplemental
8 compensation paid at the time that a motion picture is exhibited
9 through new use, reuse, clip use, or in secondary markets, as
10 distinguished from payments made during production.

11 (20) “Reuse” means any use of a qualified motion picture in the
12 same medium for which it was created, following the initial use
13 in that medium.

14 (21) “Secondary markets” means media in which a qualified
15 motion picture is exhibited following the initial media in which it
16 is exhibited.

17 (22) “Television series that relocated to California” means a
18 television series, without regard to episode length or initial media
19 exhibition, that filmed all of its prior season or seasons outside of
20 California and for which the taxpayer certifies that the credit
21 provided pursuant to this section is the primary reason for
22 relocating to California.

23 (c) (1) Notwithstanding subdivision (i) of Section 23036, in
24 the case where the credit allowed by this section exceeds the
25 taxpayer’s tax liability computed under this part, a qualified
26 taxpayer may elect to assign any portion of the credit allowed
27 under this section to one or more affiliated corporations for each
28 taxable year in which the credit is allowed. For purposes of this
29 subdivision, “affiliated corporation” has the meaning provided in
30 subdivision (b) of Section 25110, as that section was amended by
31 Chapter 881 of the Statutes of 1993, as of the last day of the taxable
32 year in which the credit is allowed, except that “100 percent” is
33 substituted for “more than 50 percent” wherever it appears in the
34 section, and “voting common stock” is substituted for “voting
35 stock” wherever it appears in the section.

36 (2) The election provided in paragraph (1):

37 (A) May be based on any method selected by the qualified
38 taxpayer that originally receives the credit.

39 (B) Shall be irrevocable for the taxable year the credit is allowed,
40 once made.

1 (C) May be changed for any subsequent taxable year if the
2 election to make the assignment is expressly shown on each of the
3 returns of the qualified taxpayer and the qualified taxpayer's
4 affiliated corporations that assign and receive the credits.

5 (D) Shall be reported to the Franchise Tax Board, in the form
6 and manner specified by the Franchise Tax Board, along with all
7 required information regarding the assignment of the credit,
8 including the corporation number, the federal employer
9 identification number, or other taxpayer identification number of
10 the assignee, and the amount of the credit assigned.

11 (3) (A) Notwithstanding any other law, a qualified taxpayer
12 may sell any credit allowed under this section that is attributable
13 to an independent film, as defined in paragraph (6) of subdivision
14 (b), to an unrelated party.

15 (B) The qualified taxpayer shall report to the Franchise Tax
16 Board prior to the sale of the credit, in the form and manner
17 specified by the Franchise Tax Board, all required information
18 regarding the purchase and sale of the credit, including the social
19 security or other taxpayer identification number of the unrelated
20 party to whom the credit has been sold, the face amount of the
21 credit sold, and the amount of consideration received by the
22 qualified taxpayer for the sale of the credit.

23 (4) In the case where the credit allowed under this section
24 exceeds the "tax," the excess credit may be carried over to reduce
25 the "tax" in the following taxable year, and succeeding five taxable
26 years, if necessary, until the credit has been exhausted.

27 (5) A credit shall not be sold pursuant to this subdivision to
28 more than one taxpayer, nor may the credit be resold by the
29 unrelated party to another taxpayer or other party.

30 (6) A party that has been assigned or acquired tax credits under
31 this paragraph shall be subject to the requirements of this section.

32 (7) In no event may a qualified taxpayer assign or sell any tax
33 credit to the extent the tax credit allowed by this section is claimed
34 on any tax return of the qualified taxpayer.

35 (8) In the event that both the taxpayer originally allocated a
36 credit under this section by the California Film Commission and
37 a taxpayer to whom the credit has been sold both claim the same
38 amount of credit on their tax returns, the Franchise Tax Board may
39 disallow the credit of either taxpayer, so long as the statute of
40 limitations upon assessment remains open.

1 (9) Chapter 3.5 (commencing with Section 11340) of Part 1 of
2 Division 3 of Title 2 of the Government Code does not apply to
3 any standard, criterion, procedure, determination, rule, notice, or
4 guideline established or issued by the Franchise Tax Board
5 pursuant to this subdivision.

6 (10) Subdivision (i) of Section 23036 shall not apply to any
7 credit sold pursuant to this subdivision.

8 (11) For purposes of this subdivision:

9 (A) An affiliated corporation or corporations that are assigned
10 a credit pursuant to paragraph (1) shall be treated as a qualified
11 taxpayer pursuant to paragraph (1) of subdivision (a).

12 (B) The unrelated party or parties that purchase a credit pursuant
13 to paragraph (3) shall be treated as a qualified taxpayer pursuant
14 to paragraph (1) of subdivision (a).

15 (d) No credit shall be allowed pursuant to this section unless
16 the qualified taxpayer provides the following to the California
17 Film Commission:

18 (1) Identification of each qualified individual.

19 (2) The specific start and end dates of production.

20 (3) The total wages paid.

21 (4) The amount of qualified wages paid to each qualified
22 individual.

23 (5) The copyright registration number, as reflected on the
24 certificate of registration issued under the authority of Section 410
25 of Title 17 of the United States Code, relating to registration of
26 claim and issuance of certificate. The registration number shall be
27 provided on the return claiming the credit.

28 (6) The total amounts paid or incurred to purchase or lease
29 tangible personal property used in the production of a qualified
30 motion picture.

31 (7) Information to substantiate its qualified expenditures.

32 (8) Information required by the California Film Commission
33 under regulations promulgated pursuant to subdivision (g)
34 necessary to verify the amount of credit claimed.

35 (e) The California Film Commission may prescribe rules and
36 regulations to carry out the purposes of this section including any
37 rules and regulations necessary to establish procedures, processes,
38 requirements, and rules identified in or required to implement this
39 section. The regulations shall include provisions to set aside a
40 percentage of annual credit allocations for independent films.

1 (f) If the qualified taxpayer fails to provide the copyright
2 registration number as required in paragraph (5) of subdivision
3 (d), the credit shall be disallowed and assessed and collected under
4 Section 19051 until the procedures are satisfied.

5 (g) For purposes of this section, the California Film Commission
6 shall do the following:

7 (1) On or after July 1, 2009, and before July 1, 2017, allocate
8 tax credits to applicants.

9 (A) Establish a procedure for applicants to file with the
10 California Film Commission a written application, on a form jointly
11 prescribed by the California Film Commission and the Franchise
12 Tax Board for the allocation of the tax credit. The application shall
13 include, but not be limited to, the following information:

14 (i) The budget for the motion picture production.

15 (ii) The number of production days.

16 (iii) A financing plan for the production.

17 (iv) The diversity of the workforce employed by the applicant,
18 including, but not limited to, the ethnic and racial makeup of the
19 individuals employed by the applicant during the production of
20 the qualified motion picture, to the extent possible.

21 (v) All members of a combined reporting group, if known at
22 the time of the application.

23 (vi) Financial information, if available, including, but not limited
24 to, the most recently produced balance sheets, annual statements
25 of profits and losses, audited or unaudited financial statements,
26 summary budget projections or results, or the functional equivalent
27 of these documents of a partnership or owner of a single member
28 limited liability company that is disregarded pursuant to Section
29 23038. The information provided pursuant to this clause shall be
30 confidential and shall not be subject to public disclosure.

31 (vii) The names of all partners in a partnership not publicly
32 traded or the names of all members of a limited liability company
33 classified as a partnership not publicly traded for California income
34 tax purposes that have a financial interest in the applicant's
35 qualified motion picture. The information provided pursuant to
36 this clause shall be confidential and shall not be subject to public
37 disclosure.

38 (viii) Detailed narratives, for use only by the Legislative
39 Analyst's Office in conducting a study of the effectiveness of this
40 credit, that describe the extent to which the credit is expected to

1 influence or affect filming and other business location decisions,
2 hiring decisions, salary decisions, and any other financial matters
3 of the applicant.

4 (ix) Any other information deemed relevant by the California
5 Film Commission or the Franchise Tax Board.

6 (B) Establish criteria, consistent with the requirements of this
7 section, for allocating tax credits.

8 (C) Determine and designate applicants who meet the
9 requirements of this section.

10 (D) Process and approve, or reject, all applications on a
11 first-come-first-served basis.

12 (E) Subject to the annual cap established as provided in
13 subdivision (i), allocate an aggregate amount of credits under this
14 section and Section 17053.85, and allocate any carryover of
15 unallocated credits from prior years.

16 (2) Certify tax credits allocated to qualified taxpayers.

17 (A) Establish a verification procedure for the amount of qualified
18 expenditures paid or incurred by the applicant, including, but not
19 limited to, updates to the information in subparagraph (A) of
20 paragraph (1) of subdivision (g).

21 (B) Establish audit requirements that must be satisfied before
22 a credit certificate may be issued by the California Film
23 Commission.

24 (C) (i) Establish a procedure for a qualified taxpayer to report
25 to the California Film Commission, prior to the issuance of a credit
26 certificate, the following information:

27 (I) If readily available, a list of the states, provinces, or other
28 jurisdictions in which any member of the applicant's combined
29 reporting group in the same business unit as the qualified taxpayer
30 that, in the preceding calendar year, has produced a qualified
31 motion picture intended for release in the United States market.
32 For purposes of this clause, "qualified motion picture" shall not
33 include any episodes of a television series that were complete or
34 in production prior to July 1, 2009.

35 (II) Whether a qualified motion picture described in subclause
36 (I) was awarded any financial incentive by the state, province, or
37 other jurisdiction that was predicated on the performance of
38 primary principal photography or postproduction in that location.

39 (ii) The California Film Commission may provide that the report
40 required by this subparagraph be filed in a single report provided

1 on a calendar year basis for those qualified taxpayers that receive
2 multiple credit certificates in a calendar year.

3 (D) Issue a credit certificate to a qualified taxpayer upon
4 completion of the qualified motion picture reflecting the credit
5 amount allocated after qualified expenditures have been verified
6 under this section. The amount of credit shown in the credit
7 certificate shall not exceed the amount of credit allocated to that
8 qualified taxpayer pursuant to this section.

9 (3) Obtain, when possible, the following information from
10 applicants that do not receive an allocation of credit:

11 (A) Whether the qualified motion picture that was the subject
12 of the application was completed.

13 (B) If completed, in which state or foreign jurisdiction was the
14 primary principal photography completed.

15 (C) Whether the applicant received any financial incentives
16 from the state or foreign jurisdiction to make the qualified motion
17 picture in that location.

18 (4) Provide the Legislative Analyst's Office, upon request, any
19 or all application materials or any other materials received from,
20 or submitted by, the applicants, in electronic format when available,
21 including, but not limited to, information provided pursuant to
22 clauses (i) to (ix), inclusive, of subparagraph (A) of paragraph (1).

23 (5) The information provided to the California Film Commission
24 pursuant to this section shall constitute confidential tax information
25 for purposes of Article 2 (commencing with Section 19542) of
26 Chapter 7 of Part 10.2.

27 (h) (1) The California Film Commission shall annually provide
28 the Legislative Analyst's Office, the Franchise Tax Board, and the
29 board with a list of qualified taxpayers and the tax credit amounts
30 allocated to each qualified taxpayer by the California Film
31 Commission. The list shall include the names and taxpayer
32 identification numbers, including taxpayer identification numbers
33 of each partner or shareholder, as applicable, of the qualified
34 taxpayer.

35 (2) (A) Notwithstanding paragraph (5) of subdivision (g), the
36 California Film Commission shall annually post on its Internet
37 Web site and make available for public release the following:

38 (i) A table which includes all of the following information: a
39 list of qualified taxpayers and the tax credit amounts allocated to
40 each qualified taxpayer by the California Film Commission, the

1 number of production days in California the qualified taxpayer
2 represented in its application would occur, the number of California
3 jobs that the qualified taxpayer represented in its application would
4 be directly created by the production, and the total amount of
5 qualified expenditures expected to be spent by the production.

6 (ii) A narrative staff summary describing the production of the
7 qualified taxpayer as well as background information regarding
8 the qualified taxpayer contained in the qualified taxpayer's
9 application for the credit.

10 (B) Nothing in this subdivision shall be construed to make the
11 information submitted by an applicant for a tax credit under this
12 section a public record.

13 (i) (1) The aggregate amount of credits that may be allocated
14 in any fiscal year pursuant to this section and Section 17053.85
15 shall be an amount equal to the sum of all of the following:

16 (A) One hundred million dollars (\$100,000,000) in credits for
17 the 2009–10 fiscal year and each fiscal year thereafter, through
18 and including the 2016–17 fiscal year.

19 (B) The unused allocation credit amount, if any, for the
20 preceding fiscal year.

21 (C) The amount of previously allocated credits not certified.

22 (2) If the amount of credits applied for in any particular fiscal
23 year exceeds the aggregate amount of tax credits authorized to be
24 allocated under this section, such excess shall be treated as having
25 been applied for on the first day of the subsequent fiscal year.
26 However, credits may not be allocated from a fiscal year other
27 than the fiscal year in which the credit was originally applied for
28 or the immediately succeeding fiscal year.

29 (3) Notwithstanding the foregoing, the California Film
30 Commission shall set aside up to ten million dollars (\$10,000,000)
31 of tax credits each fiscal year for independent films allocated in
32 accordance with rules and regulations developed pursuant to
33 subdivision (e).

34 (4) *Notwithstanding the foregoing, for the 2013–14, 2014–15,*
35 *and 2015–16 fiscal years, the California Film Commission shall*
36 *offset the aggregate amount of credits allocated to qualified motion*
37 *pictures defined pursuant to clauses (iii) and (v) of subparagraph*
38 *(A) of paragraph (15) of subdivision (b) with an allocation amount*
39 *from the next fiscal year so that the total aggregate amount of*
40 *credits allocated to qualified motion pictures defined pursuant to*

1 *clauses (i), (ii), and (iv) of subparagraph (A) of paragraph (15)*
2 *of subdivision (b) meets the minimum one hundred million dollars*
3 *(\$100,000,000) required by subparagraph (A) of this paragraph.*

4 ~~(4)~~

5 (5) Any act that reduces the amount that may be allocated
6 pursuant to paragraph (1) constitutes a change in state taxes for
7 the purpose of increasing revenues within the meaning of Section
8 3 of Article XIII A of the California Constitution and may be passed
9 by not less than two-thirds of all Members elected to each of the
10 two houses of the Legislature.

11 (j) The California Film Commission shall have the authority to
12 allocate tax credits in accordance with this section and in
13 accordance with any regulations prescribed pursuant to subdivision
14 (e) upon adoption.

15 *SEC. 3. This act provides for a tax levy within the meaning of*
16 *Article IV of the Constitution and shall go into immediate effect.*

17 ~~SECTION 1. It is the intent of the Legislature to enact~~
18 ~~legislation relating to the film and entertainment industry in~~
19 ~~California.~~